

Ownership of Roentgenogram Negatives or X-Ray Prints

Along with the problem of radiology's place in the field of medicine and surgery there is another legal question relating to the practice of radiology which may at any time become a matter of extreme importance to any radiologist. This question arises most often in court actions for alleged negligence and may be stated as follows: If a patient pays for the services of a radiologist, including therein the cost of films used, who is the owner of the negatives or prints resulting from the radiologist's use of the x-ray? There is one case upon this point: *McGarry vs. Mercier Company*, 262 N. W. 296, 100 A. L. R. 549. In that case the Supreme Court of Michigan came to the conclusion that x-ray negatives or prints are owned by the radiologist. The following is an interesting portion of the Court's opinion:

Further, plaintiff was fully justified in refusing to surrender possession of the x-ray negatives. In the absence of agreement to the contrary, such negatives are the property of the physician or surgeon who has made them incident to treating a patient. It is a matter of common knowledge that x-ray negatives are practically meaningless to the ordinary layman. But their retention by the physician or surgeon constitutes an important part of his clinical record in the particular case, and in the aggregate these negatives may embody and preserve much of value incident to a physician's or surgeon's experience. They are as much a part of the history of the case as any other case record made by a physician or surgeon. In a sense they differ little, if at all, from microscopic slides or tissue made in the course of diagnosis or treating a patient, but it would hardly be claimed that such slides were the property of the patient. Also, in the event of a malpractice suit against a physician or surgeon, the x-ray negatives which he has caused to be taken and preserved incident to treating the patient might often constitute the unimpeachable evidence which would fully justify the treatment of which the patient was complaining. In the absence of an agreement to the contrary, there is every good reason for holding that x-rays are the property of the physician or surgeon rather than of the patient or party who employed such physician or surgeon, notwithstanding the cost of taking the x-rays was charged to the patient or to the one who engaged the physician or surgeon as a part of the professional service rendered.

There is no decision in California on this point. However, it is quite likely that if the occasion arises the courts in this State will hold in accordance with the Michigan decision that x-ray prints or negatives are owned by the physician and not by the patient.

SPECIAL ARTICLES

THE FIGHT AGAINST TUBERCULOSIS*

One of the most powerful mass movements the world has ever known is the world-wide crusade against tuberculosis. Since 1904, when a Danish postal official conceived the idea of a Christmas Seal as a means of raising funds for the cure and prevention of tuberculosis, seals have been sold during the holiday season in over forty-five countries throughout the world.

The first seal to be sold in the United States was issued in Wilmington, Delaware, in 1907. The present seal is issued by the National Tuberculosis Association and sold by local city and county associations from Maine to Hawaii, and from Alaska to Florida. This year, a jolly town crier is depicted on the face of the United States Christmas Seal, bearing glad tidings of the nation-wide tuberculosis control program which has as its constant aim the further reduction in the annual death rate from tuberculosis, and the ultimate control of this disease.

In California the sixty-one local city and county tuberculosis associations have made great strides during the last year in uncovering early cases of tuberculosis in high school and college age groups. More than 100,000 students, or 10 per cent of the total enrollment in schools and colleges in this State were given tuberculin tests during the past year in case-finding surveys conducted by local associations.

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One-third of all high school students reacted positively to the tests, an even larger percentage of college students, and from 20 to 25 per cent of grammar school children.

Roentgenograms were taken of the positive reactors, and the findings discussed at medical meetings held to study the results of the surveys. The reports on both positive and negative reactors, as well as the x-ray films taken of the positives, were turned over to the family physicians named by the parents of the examined students. In most cases a public health nurse was employed to assist the physicians in bringing the student's entire family to his office for examination. Every effort was made to trace the sources of infection. Numerous unrecognized cases were uncovered through this procedure. The early treatment of these cases of active disease has not only saved many lives, but has aided greatly in preventing the further spread of infection.

Consultative clinics are another feature of the tuberculosis programs of the tuberculosis associations. These are teaching clinics, which have been held in some thirty counties throughout the State. They are held only upon the invitation of the county medical society. The cases studied in these consultative clinics are cases referred by local physicians for teaching purposes.

The theory behind the establishment of these consultative clinics was based on these facts, true in 1930:

That more than 85 per cent of tuberculosis patients in sanatoriums were moderately or far advanced.

That more than 75 per cent of these cases were moderately or far advanced before they came to the attention of a tuberculosis specialist.

Since 1930 much has been accomplished in the field of preventive control. The examination for tuberculosis of two hundred thousand young people in California during the past few years has brought to light many unrecognized cases of the disease, and has brought nearly as many parents and other relatives of these students into their doctors' offices for examination. The consultative clinics held in thirty counties have given practicing physicians in these regions assistance in the diagnosis of unusual cases and have helped to keep them informed of the latest advances in diagnosis and treatment.

The awakened interest of the general practitioner in tuberculosis is a great stride forward, since this disease will not be controlled until every general practitioner takes it upon himself to diagnose and treat tuberculosis.

TWO ARTICLES OF INTEREST IN "THE NATION" AND "THE AMERICAN MERCURY"

What One ("The Nation") Has to Say About the "Civil War" in the A. M. A., and What the Other ("The American Mercury") States About "The Nation"

From the publication office of *The Nation* a "marked copy" of the November issue was recently received by CALIFORNIA AND WESTERN MEDICINE. The item to which our attention was called was printed on page 519, and reads as follows:

Civil war has broken out at last in the American Medical Association—a very civil and respectable war, but for that reason perhaps the more formidable. A group of 430 doctors, many of them leading figures in the profession, has openly rebelled against the do-nothing group, headed by Doctor Fishbein, that controls the Association. They have published a manifesto much like one that was sidetracked in committee at the last American Medical Association convention. The patient public will welcome any open revolt against the reactionary medical machine. *The Nation* congratulates this democratic medical "four hundred" on furnishing the leadership which the profession so badly needs. At last the public can look to a responsible professional group for help in solving the problem of paying its doctor's and hospital bills. But it must be said that the manifesto seems designed to help the doctors even more than the public. While it declares the health of the people to be a national issue with which the federal, state, and local governments should be more actively concerned, and calls for a national health program, the principal objective seems to be to pay the doctors for their care of the "medically indigent." We have no objection to this worthy

aim—especially since it undermines the doctors' case for higher fees to those blessed with an income. But unless the four hundred will help us budget our health costs, they will forfeit the public hope and confidence which their action has aroused.

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On the train, returning from the Chicago meeting of State Medical Association Secretaries and Editors, in scanning the pages of the December issue of *The American Mercury*, we chanced upon the item. "The Nation" and "New Republic": Our "Liberal" Weeklies." For members who, like ourselves, see a copy of *The Nation* only from time to time, the following excerpts concerning that magazine, whose comment concerning the "Civil War in the A. M. A." appears above, may be of passing interest. Some brief quotations follow:

OUR "LIBERAL" WEEKLIES

By Harold Lord Varney

There is clucking and feather-pulling these days in the dovecoats of American Liberalism. Trotskyism belabors Stalinism in the quivering columns of the weeklies which are purportedly non-Communist. Heywood Broun, infuriated at a *Nation* which gives only 95 per cent allegiance to the C. I. O., deserts to a *New Republic* whose batting average is one hundred. Oswald Garrison Villard, increasingly at variance with his brethren since his mutiny on the Roosevelt court-packing plan, is dropped from the *Nation's* editorial board to the obscurity of a column on the magazine which his fortune created. Sulphurous recriminations choke the atmosphere. The Liberal "United Front" is disintegrating before our eyes.

But the wonder is that the Liberal crack-up did not come long ago. . . .

Nowhere has this stultification been more painfully apparent in recent years than in the two recognized Liberal weeklies—the *New Republic* and the *Nation*. Vying with each other for the support of the Left intelligentsia, they have often seemed to be in competition for the dubious honor of the first arrival in Moscow. It is possible to trace the retreating steps of American Liberalism through the years of the post-war period in the reddening policies of these two publications. Their role has been central in all the backings and fillings of the Left intelligentsia. Their columns have mirrored the metamorphosis which has transformed the erstwhile disciples of Wilson and Jefferson into incense-bearers at the shrine of Marx. A brief glance at their careers will throw a revealing light upon the causes of their present futility. . . .

But with the coming of the Depression, Villard found himself facing the same dilemma that was to drive Bliven and Soule into the outright revolutionary position. His once Liberal public was veering sharply to the Left. Technocracy, social planning, and all the crackpot variations of collectivism were haunting the Liberal mind. Like its rival, the *Nation* soon tacked to the new breeze. There were frequent upsets in the editorial family. . . .

Thus, by separate voyages, the *New Republic* and the *Nation* have now arrived at a common revolutionary harbor. Divergences of editorial policy there have been, of course, over the years. But it is significant that such differences have been rather of manner and strategy than of social direction. Today, for all practical purposes, both publications are well within the Marxian penumbra. Although the editors angrily deny the imputation, they are pursuing policies which parallel, with almost uncanny fidelity, the official Stalin Party-Line.

Let us glance at a few of their present enthusiasms and apprehensions in the light of their professed Liberalism. We will find that the two magazines have stood as one in the face of every American controversial issue of the last twelve-month, with the single exception of the issue of neutrality. It is ironic to note that in each situation their reaction has been anti-Liberal. . . .

Furthermore, it is probably accurate to say that, today, the *New Republic* and the *Nation* are the most effective amateur propaganda adjuncts to the American Communist movement. For the once-Liberal weeklies are, in a sense, the bridge between Communism and the unconvinced intelligentsia. Their 75,000 subscribers, by a process of natural selection, are vocational molders of national opinion. They are teachers, writers, clergymen, professional men and women, social workers—the picked middlemen of American intellectual life. . . .

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The above may also be of interest, in connection with editorial, press dispatch, and other comment in this issue of CALIFORNIA AND WESTERN MEDICINE.

UNITED STATES EXPERIMENT IN STATE MEDICINE BRINGS PROTESTS

A major experiment in socialized medicine, backed by federal influence and public funds, was launched in Washington, D. C., on November 8.

The local medical profession plans to contest its legality and if possible halt the experiment before it becomes a model for the country. Supporters are equally determined, however, and have found a receptive atmosphere for their plans among the many thousands of moderately paid government clerks who make up a significant share of this city's population.

The experiment is in the form of a coöperative clinic for employees of the Federal Home Owners' Loan Corporation and affiliated agencies. The Home Loan Bank Board has itself pledged a direct contribution of \$40,000—half to be paid this year and half next year—on the theory that the expenditure is an "investment" in the improved health and, therefore, the efficiency of its staff. The Board's contribution is an outright gift, not a loan.

TWO THOUSAND PERSONS ELIGIBLE

Approximately two thousand persons are expected to be eligible to participate in the coöperative clinic. The group of agencies involved includes, in addition to the Home Loan Board and Corporation, the Federal Home Loan Bank System, the Home Loan Insurance Corporation, and the federal savings and loan section of the Board.

All employees of these agencies may obtain the free use of the services of the clinic at a cost of \$2.20 a month per individual employee or \$3.30 a month for employee and family. The system is on a voluntary basis, but a sufficient proportion of the personnel of the agencies has signed up in advance to make the experiment financially possible, it is indicated.

The clinic is headed by Dr. Henry Rolf Brown, the retiring chief of the tuberculosis division of the Veterans' Administration, who sees in a coöperative clinic for a group of government employees a system not fundamentally different from medical services provided in the Army and Navy or for veterans.

MEDICAL ASSOCIATION OPPOSED

The District of Columbia Medical Association, however, takes a sharply divergent view of the experiment. Behind closed doors the local doctors considered what to them is a very grave threat to the independence of the medical profession, and weighed plans for a legal fight to stamp out the HOLC coöperative clinic. No decision on the best course of action has yet been announced, but the implication is that the association will first attempt to persuade local public officials that the scheme is illegal. If this fails, it is suggested that court action be taken.

The doctors believe they have a precedent in the recent success of the local legal profession in stopping the practice of banks performing legal services for their clients. The corporation counsel ruled that no corporation can practice law. All banks are understood to have since abandoned the practice, or arranged to do so at an early date. The doctors believe that if it is illegal for a corporation to practice law, it should prove equally illegal for a corporation to practice medicine. There is a question, however, as to the analogy between a banking corporation directly providing legal service and a coöperative organization which is aided by the contribution of a corporation, but not directly related to it.

EXPERIMENT STUDIED

The outcome of the HOLC clinic experiment is being watched closely from all sides. It is considered extremely likely that if this experiment establishes both its legal validity and its ability to operate profitably it will be emulated by other agencies of the Federal Government. The semi-independent agencies such as the HOLC would presumably come first. This type of agency is able to dispose of its funds for the encouragement of such a clinic on its own initiative since it is legally a private corporation. It is backed by Congress, and Treasury funds, but handles its own business independently.

Regular government departments could not contribute funds to such an organization among their employees with-